

Publisher's Note

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Criminal Practice Manual

This manual will assist the criminal law practitioner, whether defence counsel, Crown counsel, judge or law enforcement officer, with a quick understanding and approach to frequently encountered problems. Topics covered include statutory interpretation, investigation, rights and powers; the trial process—from investigation to trial; evidence, legislative compliance with the Constitution, and appeals.

This release features valuable updates to the case law and commentary in Chapters 1 (Commission of Alleged Offence), 2 (Investigation: Rights and Powers), 3 (The Trial Process — From Investigation to Trial), 4 (Evidence), and 5 (Remedies).

Case Law Highlights

- **Investigation: Rights and Powers — Powers of the State — Right/Power to Detain — Arbitrary Detention — *Charter* s. 9 — The Common Law Power to Detain:** Officers responding to a 'look out' notice concerning a previous robbery, stopped the accused and another man as they walked along a street late at night. IDs were requested and while they were being checked the other officer asked some basic questions. The officer asked, for officer safety, that the accused take his hands out of his pockets which revealed a gun. A further search uncovered ammunition and cocaine. The accused brought an application to exclude evidence on the basis of sections 8, 9 and 10(b) *Charter* violations. At trial the court found violations had occurred but no evidence was excluded. On appeal the sole issue is whether the trial judge erred by refusing to exclude the evidence on the basis that the police acted in good faith and did not believe that they had detained the accused. The accused challenged the finding of good faith police conduct submitting that as the police acted in ignorance of or with disregard for well-established law limiting police powers, the finding of good faith cannot stand. In allowing the appeal, the Court found that the trial judge had erred in assessing the seriousness of the police's *Charter*-infringing conduct. The police conduct, while not deliberate, was unacceptable and to admit the evidence would be to condone ignorance of *Charter* standards: *R. v. Omar*, 2018 CarswellOnt 20344, 2018 ONCA 975 (Ont. C.A.).

- Investigation: Rights and Powers — Powers of the State — Powers of Search and Seizure — The Section 8 Protection — The Privacy Interest:** A spouse signed a consent form for the seizure of a computer located in the shared space. The seizure was warrantless. The police retained the computer for four months without searching it, then obtained a search warrant and found child pornography on it. The accused brought an application to have the evidence excluded on the basis of sections 8 and 9 *Charter* violations. On appeal, the Supreme Court found that by choosing to share computers with friends and family, Canadians are not required to give up their *Charter* protection from state interference in their private lives, and to accept that their friends and family can unilaterally authorize police to take things that they share. To hold that there was no seizure within the meaning of the *Charter* when a party with equal and overlapping privacy interest provided consent would effectively permit a consenting party to waive privacy rights of other parties. The accused had a reasonable expectation of privacy in the shared computer. His rights had not been waived. The Court therefore concluded that the taking of the computer by the police constituted a seizure within the meaning of s. 8 of the *Charter*, and the warrantless seizure was not reasonable because it was not authorized by any law: *R. v. Reeves*, 2018 CarswellOnt 20930, 2018 CarswellOnt 20931, 2018 SCC 56, 367 C.C.C. (3d) 129, 50 C.R. (7th) 357, 427 D.L.R. (4th) 579, [2018] S.C.J. No. 56 (S.C.C.).
- Evidence — Proving the Case — Presumptions — Presumption With Basic Facts — Rebuttal Presumptions of Law:** Where an accused is charged with operating a motor vehicle with a blood alcohol level exceeding 80 mg of alcohol in 100 ml of blood, the presumptions set out in s. 258(1)(c) of the *Criminal Code* apply. To rebut those presumptions, an accused must adduce evidence tending to show that the malfunctioning or improper operation of the approved instrument casts doubt on the reliability of the results. The Supreme Court of Canada found that the evidence adduced by the accused was purely speculative. It was not enough to argue that the procedural defect in issue was likely to compromise reliability. There was clearly no evidence that the alleged improper operation of the instrument tended to cast doubt on the reliability of the results. Moreover, evidence showed that both test results were consistent: *R. c. Cyr-Langlois*, 2018 CarswellQue 10902, 2018 CarswellQue 10901, 2018 CSC 54, 368 C.C.C. (3d) 415, 33 M.V.R. (7th) 1 (S.C.C.).

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